

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JUNE 27, 2007

AMENDED IN SENATE JUNE 21, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 422

Introduced by Assembly Member Hancock

February 16, 2007

An act to amend Section 25356.1.5 of the Health and Safety Code, ~~and to amend Section 13304 of, and to add Section 13304.2 to, the~~ *and to add Section 13304.2 to the* Water Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 422, as amended, Hancock. Hazardous substances: water quality.

(1) Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Superfund Act) imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The California Superfund Act excludes releases of petroleum from that act. The California Superfund Act requires any response action taken or approved under that act to meet certain requirements with regard to, among other things, the preparation of the health or ecological risk assessment. The

act requires the exposure assessment of that risk assessment to meet specified requirements, including the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

This bill would require that the exposure assessment of any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to the California Superfund Act include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

(2) Existing law, the Porter-Cologne Water Quality Control Act (water quality control act), requires a person who discharges waste into the waters of the state in violation of waste discharge requirements or other order or prohibition issued by a regional board or the state water board, upon the order of that regional board or the state board, to clean up the waste or to abate the effects of the waste. The act subjects a person who violates a cleanup or abatement order to civil penalties.

This bill would authorize the state board or a regional board to require a person conducting cleanup, abatement, or other remedial action for a brownfield *site*, as defined, to assess the potential human health or ecological risks caused or created by the discharge using human health and environmental screening levels or a site-specific assessment of risks.

The bill would provide that this authority applies only to an order issued by the state board or a regional board on or after January 1, 2008, but the bill would allow the state board or a regional board to require a site-specific assessment of human health or ecological risks at a brownfield *site* that is subject to an order issued before January 1, 2008, pursuant to the water quality control act as it read on December 31, 2007. The bill would provide that if the state board or a regional board requires a site-specific assessment of human health or ecological risks at a brownfield *site* that is subject to an order issued before January 1, 2008, the state board or a regional board would be required to make a specified determination.

~~This bill would require cleanup and abatement efforts conducted by a discharger under the water quality control act, in addition to addressing any water quality impacts or threats, to also comply with these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25356.1.5 of the Health and Safety Code
2 is amended to read:
3 25356.1.5. (a) Any response action taken or approved pursuant
4 to this chapter shall be based upon, and no less stringent than, all
5 of the following requirements:
6 (1) The requirements established under federal regulation
7 pursuant to Subpart E of the National Oil and Hazardous
8 Substances Pollution Contingency Plan (40 C.F.R. 300.400 et
9 seq.), as amended.
10 (2) The regulations established pursuant to Division 7
11 (commencing with Section 13000) of the Water Code, all
12 applicable water quality control plans adopted pursuant to Section
13 13170 of the Water Code and Article 3 (commencing with Section
14 13240) of Chapter 4 of Division 7 of the Water Code, and all
15 applicable state policies for water quality control adopted pursuant
16 to Article 3 (commencing with Section 13140) of Chapter 3 of
17 Division 7 of the Water Code, to the extent that the department or
18 the regional board determines that those regulations, plans, and
19 policies do not require a less stringent level of remediation than
20 the federal regulations specified in paragraph (1) and to the degree
21 that those regulations, plans, and policies do not authorize
22 decisionmaking procedures that may result in less stringent
23 response action requirements than those required by the federal
24 regulations specified in paragraph (1).
25 (3) Any applicable provisions of this chapter, to the extent those
26 provisions are consistent with the federal regulations specified in
27 paragraph (1) and do not require a less stringent level of
28 remediation than, or decisionmaking procedures that are at variance
29 with, the federal regulations set forth in paragraph (1).
30 (b) Any health or ecological risk assessment prepared in
31 conjunction with a response action taken or approved pursuant to
32 this chapter shall be based upon Subpart E of the National Oil and
33 Hazardous Substances Pollution Contingency Plan (40 C.F.R.
34 300.400 et seq.), the policies, guidelines, and practices of the
35 United States Environmental Protection Agency developed

1 pursuant to the federal act, and the most current sound scientific
2 methods, knowledge, and practices of public health and
3 environmental professionals who are experienced practitioners in
4 the fields of epidemiology, risk assessment, environmental
5 contamination, ecological risk, fate and transport analysis, and
6 toxicology. Risk assessment practices shall include the most current
7 sound scientific methods for data evaluation, exposure assessment,
8 toxicity assessment, and risk characterization, documentation of
9 all assumptions, methods, models, and calculations used in the
10 assessment, and any health risk assessment shall include all of the
11 following:

12 (1) Evaluation of risks posed by acutely toxic hazardous
13 substances based on levels at which no known or anticipated
14 adverse effects on health will occur, with an adequate margin of
15 safety.

16 (2) Evaluation of risks posed by carcinogens or other hazardous
17 substances that may cause chronic disease based on a level that
18 does not pose any significant risk to health.

19 (3) Consideration of possible synergistic effects resulting from
20 exposure to, or interaction with, two or more hazardous substances.

21 (4) Consideration of the effect of hazardous substances upon
22 subgroups that comprise a meaningful portion of the general
23 population, including, but not limited to, infants, children, pregnant
24 women, the elderly, individuals with a history of serious illness,
25 or other subpopulations, that are identifiable as being at greater
26 risk of adverse health effects due to exposure to hazardous
27 substances than the general population.

28 (5) Consideration of exposure and body burden level that alter
29 physiological function or structure in a manner that may
30 significantly increase the risk of illness and of exposure to
31 hazardous substances in all media, including, but not limited to,
32 exposures in drinking water, food, ambient and indoor air, and
33 soil.

34 (c) If currently available scientific data are insufficient to
35 determine the level of a hazardous substance at which no known
36 or anticipated adverse effects on health will occur, with an adequate
37 margin of safety, or the level that poses no significant risk to public
38 health, the risk assessment prepared in conjunction with a response
39 action taken or approved pursuant to this chapter shall be based
40 on the level that is protective of public health, with an adequate

margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (b), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

(d) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(e) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

~~SEC. 2. Section 13304 of the Water Code is amended to read:~~

~~13304. (a) (1) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.~~

~~(2) Any cleanup and abatement efforts conducted by a discharger pursuant to this section, in addition to addressing any water quality impacts or threats, shall also comply with Section 13304.2.~~

~~(3) A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for,~~

1 ~~uninterrupted replacement water service, which may include~~
2 ~~wellhead treatment, to each affected public water supplier or private~~
3 ~~well owner.~~

4 ~~(4) Upon failure of any person to comply with the cleanup or~~
5 ~~abatement order, the Attorney General, at the request of the board,~~
6 ~~shall petition the superior court for that county for the issuance of~~
7 ~~an injunction requiring the person to comply with the order. In the~~
8 ~~suit, the court shall have jurisdiction to grant a prohibitory or~~
9 ~~mandatory injunction, either preliminary or permanent, as the facts~~
10 ~~may warrant.~~

11 ~~(b) (1) The regional board may expend available moneys to~~
12 ~~perform any cleanup, abatement, or remedial work required under~~
13 ~~the circumstances set forth in subdivision (a), including, but not~~
14 ~~limited to, supervision of cleanup and abatement activities that, in~~
15 ~~its judgment, is required by the magnitude of the endeavor or the~~
16 ~~urgency for prompt action to prevent substantial pollution,~~
17 ~~nuisance, or injury to any waters of the state. The action may be~~
18 ~~taken in default of, or in addition to, remedial work by the waste~~
19 ~~discharger or other persons, and regardless of whether injunctive~~
20 ~~relief is being sought.~~

21 ~~(2) The regional board may perform the work itself, or with the~~
22 ~~cooperation of any other governmental agency, and may use rented~~
23 ~~tools or equipment, either with operators furnished or unoperated.~~
24 ~~Notwithstanding any other provisions of law, the regional board~~
25 ~~may enter into oral contracts for the work, and the contracts,~~
26 ~~whether written or oral, may include provisions for equipment~~
27 ~~rental and in addition the furnishing of labor and materials~~
28 ~~necessary to accomplish the work. The contracts are not subject~~
29 ~~to approval by the Department of General Services.~~

30 ~~(3) The regional board shall be permitted reasonable access to~~
31 ~~the affected property as necessary to perform any cleanup,~~
32 ~~abatement, or other remedial work. The access shall be obtained~~
33 ~~with the consent of the owner or possessor of the property or, if~~
34 ~~the consent is withheld, with a warrant duly issued pursuant to the~~
35 ~~procedure described in Title 13 (commencing with Section~~
36 ~~1822.50) of Part 3 of the Code of Civil Procedure. However, in~~
37 ~~the event of an emergency affecting public health or safety, the~~
38 ~~regional board may enter the property without consent or the~~
39 ~~issuance of a warrant.~~

1 ~~(4) The regional board may contract with a water agency to~~
2 ~~perform, under the direction of the regional board, investigations~~
3 ~~of existing or threatened groundwater pollution or nuisance. The~~
4 ~~agency's costs of performing the contracted services shall be~~
5 ~~reimbursed by the regional board from the first available funds~~
6 ~~obtained from cost-recovery actions for the specific site. The~~
7 ~~authority of a regional board to contract with a water agency is~~
8 ~~limited to a water agency that draws groundwater from the affected~~
9 ~~aquifer, a metropolitan water district, or a local public agency~~
10 ~~responsible for water supply or water quality in a groundwater~~
11 ~~basin.~~

12 ~~(e) (1) If the waste is cleaned up or the effects of the waste are~~
13 ~~abated, or, in the case of threatened pollution or nuisance, other~~
14 ~~necessary remedial action is taken by any governmental agency,~~
15 ~~the person or persons who discharged the waste, discharges the~~
16 ~~waste, or threatened to cause or permit the discharge of the waste~~
17 ~~within the meaning of subdivision (a), are liable to that~~
18 ~~governmental agency to the extent of the reasonable costs actually~~
19 ~~incurred in cleaning up the waste, abating the effects of the waste,~~
20 ~~supervising cleanup or abatement activities, or taking other~~
21 ~~remedial action. The amount of the costs is recoverable in a civil~~
22 ~~action by, and paid to, the governmental agency and the state board~~
23 ~~to the extent of the latter's contribution to the cleanup costs from~~
24 ~~the State Water Pollution Cleanup and Abatement Account or other~~
25 ~~available funds.~~

26 ~~(2) The amount of the costs constitutes a lien on the affected~~
27 ~~property upon service of a copy of the notice of lien on the owner~~
28 ~~and upon the recordation of a notice of lien, that identifies the~~
29 ~~property on which the condition was abated, the amount of the~~
30 ~~lien, and the owner of record of the property, in the office of the~~
31 ~~county recorder of the county in which the property is located.~~
32 ~~Upon recordation, the lien has the same force, effect, and priority~~
33 ~~as a judgment lien, except that it attaches only to the property~~
34 ~~posted and described in the notice of lien, and shall continue for~~
35 ~~10 years from the time of the recording of the notice, unless sooner~~
36 ~~released or otherwise discharged. Not later than 45 days after~~
37 ~~receiving a notice of lien, the owner may petition the court for an~~
38 ~~order releasing the property from the lien or reducing the amount~~
39 ~~of the lien. In this court action, the governmental agency that~~
40 ~~incurred the cleanup costs shall establish that the costs were~~

1 reasonable and necessary. The lien may be foreclosed by an action
2 brought by the state board on behalf of the regional board for a
3 money judgment. Moneys recovered by a judgment in favor of the
4 state board shall be deposited in the State Water Pollution Cleanup
5 and Abatement Account.

6 (d) ~~If, despite reasonable effort by the regional board to identify~~
7 ~~the person responsible for the discharge of waste or the condition~~
8 ~~of pollution or nuisance, the person is not identified at the time~~
9 ~~cleanup, abatement, or remedial work is required to be performed,~~
10 ~~the regional board is not required to issue an order under this~~
11 ~~section.~~

12 (e) ~~“Threaten,” for purposes of this section, means a condition~~
13 ~~creating a substantial probability of harm, when the probability~~
14 ~~and potential extent of harm make it reasonably necessary to take~~
15 ~~immediate action to prevent, reduce, or mitigate damages to~~
16 ~~persons, property, or natural resources.~~

17 (f) ~~Replacement water provided pursuant to subdivision (a) shall~~
18 ~~meet all applicable federal, state, and local drinking water~~
19 ~~standards, and shall have comparable quality to that pumped by~~
20 ~~the public water system or private well owner prior to the discharge~~
21 ~~of waste.~~

22 (g) (1) ~~Any public water supplier or private well owner~~
23 ~~receiving replacement water by reason of an order issued pursuant~~
24 ~~to subdivision (a), or any person or entity who is ordered to provide~~
25 ~~replacement water pursuant to subdivision (a), may request~~
26 ~~nonbinding mediation of all replacement water claims.~~

27 (2) ~~If so requested, the public water suppliers receiving the~~
28 ~~replacement water and the persons or entities ordered to provide~~
29 ~~the replacement water, within 30 days of the submittal of a water~~
30 ~~replacement plan, shall engage in at least one confidential~~
31 ~~settlement discussion before a mutually acceptable mediator.~~

32 (3) ~~Any agreement between parties regarding replacement water~~
33 ~~claims resulting from participation in the nonbinding mediation~~
34 ~~process shall be consistent with the requirements of any cleanup~~
35 ~~and abatement order.~~

36 (4) ~~A regional board or the state board is not required to~~
37 ~~participate in any nonbinding mediation requested pursuant to~~
38 ~~paragraph (1).~~

39 (5) ~~The party or parties requesting the mediation shall pay for~~
40 ~~the costs of the mediation.~~

1 ~~(h) As part of any cleanup and abatement order that requires~~
2 ~~the provision of replacement water, a regional board or the state~~
3 ~~board shall request a water replacement plan from the discharger~~
4 ~~in cases where replacement water is to be provided for more than~~
5 ~~30 days. The water replacement plan is subject to the approval of~~
6 ~~the regional board or the state board prior to its implementation.~~

7 ~~(i) A “water replacement plan” means a plan pursuant to which~~
8 ~~the discharger will provide replacement water in accordance with~~
9 ~~a cleanup and abatement order.~~

10 ~~(j) This section does not impose any new liability for acts~~
11 ~~occurring before January 1, 1981, if the acts were not in violation~~
12 ~~of existing laws or regulations at the time they occurred.~~

13 ~~(k) Nothing in this section limits the authority of any state~~
14 ~~agency under any other law or regulation to enforce or administer~~
15 ~~any cleanup or abatement activity.~~

16 ~~(l) The Legislature declares that the amendments made to~~
17 ~~subdivision (a) of this section by Senate Bill 1004 of the 2003–04~~
18 ~~Regular Session do not constitute a change in, but are declaratory~~
19 ~~of, existing law.~~

20 ~~SEC. 3.~~

21 ~~SEC. 2.~~ Section 13304.2 is added to the Water Code, to read:

22 13304.2. (a) For purposes of this section, ~~“brownfield” has~~
23 ~~the same meaning as defined in Section 44504.1 of the Health and~~
24 ~~Safety Code. “brownfield site” means a real estate parcel or~~
25 ~~improvements located on the parcel, or both that parcel and the~~
26 ~~improvements, that is abandoned, idled, or underused, due to~~
27 ~~environmental contamination and that is proposed to be~~
28 ~~redeveloped.~~

29 (b) The state board or a regional board may require a person
30 conducting cleanup, abatement, or other remedial action pursuant
31 to Section 13304 for a brownfield *site* to assess the potential human
32 health or ecological risks caused or created by the discharge, using
33 human health and environmental screening levels or a site-specific
34 assessment of risks.

35 (c) In conducting a site-specific assessment of human health or
36 ecological risks, the discharger shall address all of the following
37 factors to the extent relevant based on site-specific conditions:

38 (1) An evaluation of risks posed by acutely toxic hazardous
39 substances.

1 (2) An evaluation of risks posed by carcinogenic or other
2 hazardous substances that may cause chronic disease.

3 (3) Consideration of possible synergistic effects resulting from
4 exposure to, or interaction with, two or more hazardous substances.

5 (4) Consideration of the effect of hazardous substances upon
6 subgroups that comprise a meaningful portion of the general
7 population, including, but not limited to, infants, children, pregnant
8 women, or other subpopulations that are identifiable as being at
9 greater risk than the general population of adverse health effects
10 due to exposure to hazardous substances.

11 (5) Consideration of exposure level and body burden level that
12 alter physiological function or structure in a manner that may
13 significantly increase the risk of illness and of exposure to
14 hazardous substances in all media, including, but not limited to,
15 exposures in drinking water, food, ambient and indoor air, or soil.

16 (6) The development of reasonable maximum estimates of
17 exposure for both current land use conditions and reasonably
18 foreseeable future land uses at the site.

19 (7) The development of reasonable maximum estimates of
20 exposure to volatile organic compounds that may enter structures
21 that are on the site or that are proposed to be constructed on the
22 site and that may cause exposure due to accumulation of these
23 volatile organic compounds in the indoor air of those structures.

24 (d) The state board or a regional board may document its
25 decision to require a site-specific assessment of human health or
26 ecological risks in a letter issued to the discharger pursuant to
27 Section 13267 through amendment of the cleanup and abatement
28 order issued pursuant to Section 13304, or through other written
29 means that the board deems appropriate.

30 (e) (1) Except as provided in paragraph (2), this section applies
31 only to an order issued by the state board or a regional board issued
32 pursuant to Section 13304 on or after January 1, 2008.

33 (2) The state board or a regional board may require a
34 ~~site-specified~~ *site-specific* assessment of human health or ecological
35 risks at a brownfield *site* that is subject to an order issued before
36 January 1, 2008, only if the state board or a regional board makes
37 a determination that site-specific circumstances demonstrate the
38 need for that assessment. A site-specific assessment pursuant to
39 this paragraph shall be done in accordance with the authority

1 granted to the state board or a regional board pursuant to this
2 division, as it read on December 31, 2007.

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5 **CORRECTIONS:**

6 **Text—Pages 9 and 10.**

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